

1 (Whereupon, the following
2 proceedings were had out of in
3 camera.)

4 MR. FRIEDMAN: The testimony -- there were
5 filed -- and I forget the date -- some corrections.
6 And the testimony as it was presented today and as
7 I've handed it to the court reporter reflect the
8 corrections. So that what I handed the court
9 reporter and what we're offering in evidence has in
10 it a couple of pages that say "corrected."

11 JUDGE DOLAN: Oh. Okay. So those are already
12 part of the record.

13 [!EZ SPEAKER 02]: And so that is part of the
14 record.

15 JUDGE DOLAN: Okay. Then with that, is there
16 any objections to AT&T Exhibit 3.0 and AT&T
17 Exhibit 3.1?

18 MR. PFAFF: No objection.

19 MR. HARVEY: None from Staff. Although if
20 Mr. McPhee would confirm there's some percentages
21 below one of the numbers he corrected -- and actually
22 two of the numbers he corrected on Schedule JSM4, and

1 I'm wondering if those remain the same or whether
2 they change any as a result of the corrections.

3 THE WITNESS: They remain the same.

4 MR. HARVEY: Thank you, sir. I appreciate it.

5 No objection from Staff.

6 JUDGE DOLAN: Okay. Then AT&T Exhibit 3.0 and
7 AT&T Exhibit 3.1 will be admitted into the record.

8 Subject to that, ready for cross.

9 (Whereupon, AT&T Exhibit
10 Nos. 3.0 & 3.1 were admitted
11 into evidence.)

12 MR. FRIEDMAN: And Mr. McPhee is available for
13 cross.

14 MR. PFAFF: Back on then?

15 JUDGE DOLAN: Yes.

16 CROSS-EXAMINATION

17 BY

18 MR. PFAFF:

19 Q Good morning, Mr. McPhee. My name a Jeff
20 Pfaff with Sprint Nextel, how are you today?

21 A I'm fine. Thank you. Good morning.

22 Q Good.

1 If I -- if you don't understand me
2 clearly, just ask me to repeat the question.

3 [!EZ SPEAKER 04]: And to the court reporter,
4 if I start speaking too quickly, just let me know.
5 Nobody's ever complained of me speaking too softly.
6 So I don't think we'll have that problem.

7 JUDGE DOLAN: Jeff, before you proceed -- I'm
8 sorry -- these exhibits were supposed to be attached
9 to which copy? Was it the -- because I didn't
10 mention the exhibits in the record. Are they
11 attached to part of his testimony?

12 MR. FRIEDMAN: There are -- the direct
13 testimony has Exhibits 1 -- JSM1 through 6 and JSM7
14 is an exhibit to the rebuttal testimony.

15 JUDGE DOLAN: All right.

16 MR. FRIEDMAN: And the corrected pages -- the
17 corrected exhibit pages pertained to JSM4, which is
18 attached to the direct testimony. And those
19 corrected pages, like the corrected pages of
20 testimony, are what we filed.

21 JUDGE DOLAN: Are attached.

22 MR. FRIEDMAN: Right.

1 JUDGE DOLAN: Okay. Just so make the record
2 clear, then it's 3.0 with attachments and 3.1 with
3 attachments.

4 [!EZ SPEAKER 02]: Right. Thank you.

5 JUDGE DOLAN: Thank you. Sorry.

6 Proceed.

7 MR. PFAFF: Very well.

8 BY [!EZ SPEAKER 04]:

9 Q Mr. McPhee, we've met a couple time
10 previously, haven't we?

11 A Yes, at least once in Nevada.

12 Q Thanks. I realized you looked familiar.
13 I've been traveling quite a bit lately. I have a
14 hard time putting all the faces to the names.

15 You've indicated in response to
16 questions from your attorney that you have your
17 direct testimony and exhibits and rebuttal testimony
18 and exhibit in front of you; is that correct?

19 A Yes, it is.

20 Q Do you have anything else in front of you?

21 A Yes, I do.

22 Q Could you describe what that is, please?

1 A I have a binder that includes -- if you'd
2 like me to go through each tab, discovery response
3 that AT&T made to Sprint and then the testimony of
4 the other parties in this case.

5 Q Okay. And do you have the exhibits from
6 the other testimonies?

7 A I don't believe I have all the exhibits,
8 no.

9 Q All right. Anything else in front of you?

10 A A notepad and a couple other attachments
11 that were sent out and discussed yesterday, I
12 believe, just of various subjects.

13 Q Thank you.

14 You were employed by AT&T at the time
15 that AT&T and BellSouth announced their merger; is
16 that correct?

17 A That's correct.

18 Q Okay. And you were employed when the
19 merger was consummated?

20 A Yes.

21 Q And you're aware that at the time AT&T
22 reported that it would reap certain benefits from the

1 merger; correct?

2 A That's correct.

3 Q I'm going to hand you -- I'm not going to
4 mark it at this time. I'm just going to hand it out
5 to you right now. And this is the document titled,
6 BellSouth News Release Archive; is that correct?

7 A Yes, it is.

8 Q And it's got the AT&T logo at the top?

9 MR. FRIEDMAN: I'm going to object. Nothing
10 wrong with the form of that question. I'm going to
11 object to the line of questions as beyond the scope
12 of the direct testimony.

13 It is true that Mr. McPhee in his
14 direct testimony talks about the merger commitment,
15 your Honor, that is the subject of this case. That
16 does not, in our view, render relevant to this
17 proceeding and certainly does not render within the
18 scope of his direct examination, kind of, everything
19 and anything having to do with the merger.

20 MR. PFAFF: Well, I assure Mr. Friedman I
21 wasn't going to ask about everything and anything to
22 do with the merger. But this release contains

1 information about certain benefits that AT&T would
2 derive from the merger.

3 Now, Mr. McPhee has expressed an
4 opinion about some reduction in revenues that AT&T --
5 that come from the merger. And I think I'm entitled
6 to ask for information about the benefits as well.

7 MR. FRIEDMAN: Okay. Really, I want to be very
8 clear. There are two grounds for the objection. One
9 is it's beyond the scope of the cross -- of the
10 direct. The other is it's irrelevant. This
11 Commission cannot possibly be aided in deciding the
12 meaning or application of the merger commitment by
13 knowing that AT&T reaped benefits of -- I don't know
14 what they may have reaped.

15 JUDGE DOLAN: Well, I'm going to overrule the
16 objection. So...

17 MR. PFAFF: Thank you.

18 BY [!EZ SPEAKER 04]:

19 Q So, Mr. McPhee, just following up, again, I
20 just want to point out, if you look at the bottom of
21 what's labeled Page 2, do you see that URL address at
22 the bottom?

1 A Yes, I do.

2 Q Okay. And could you read that, please.

3 A It's HTTP, colon, forward slash, forward
4 slash, AT&T, dot, central cast, dot, net, forward
5 slash -- all one word -- BellSouth news archived,
6 forward slash, release, dot, ASPX, question mark, the
7 letters ID, equal, 5773.

8 Q Great. Thank you.

9 And if you'll turn to the third page,
10 you'll see at the very bottom the narrative here,
11 that little copyright symbol. Do you see that?

12 A I do.

13 Q And would you read what that says.

14 MR. FRIEDMAN: I'm going to -- Judge, I would
15 like to ask for a continuing objection on both
16 relevance grounds and ground that this is beyond the
17 scope of the direct. If I can have that as a
18 standing objection for purposes of the record.

19 I'd like to add at this time an
20 additional objection, which is foundation. There is
21 no indication whatsoever that this person sitting
22 next to me knows anything whatsoever about what

1 we're about to talk about; no indication that he's
2 seen this document; no indication that he had any
3 information that a layperson wouldn't have about the
4 merger. So unless counsel can establish some basis
5 for thinking that this human being is an appropriate
6 vehicle for discussion of this subject, there's no
7 foundation for the questions.

8 MR. PFAFF: Well, your Honor, I'm trying to
9 establish that this appears to be an official AT&T
10 BellSouth news release. And as such, it would be an
11 official document of the company. I'm simply going
12 to ask Mr. McPhee if he agrees with it or disagrees
13 with it.

14 MR. FRIEDMAN: And I'll object that that's
15 relevant. What difference can it possibly make
16 whether Mr. McPhee agrees with the assertions in the
17 document. Is that going to be the question?

18 MR. PFAFF: Well, Mr. McPhee is here testifying
19 on behalf of AT&T. I believe I'm entitled to reflect
20 other positions that AT&T has taken.

21 MR. FRIEDMAN: Your Honor, if Sprint wanted to
22 get to -- to try to get into the record information

1 about positions that AT&T has taken, the way to do
2 that would have been through its witnesses to whose
3 testimony Sprint could have attached AT&T documents,
4 okay, for which authentication would be available or
5 which would be self-authenticating.

6 Again, it is not proper to put in
7 front of a witness documents that the witness has
8 never seen and knows nothing about and to try to use
9 the witness as a vehicle for getting Sprint's story
10 into the case.

11 So, again, foundation objection.

12 JUDGE DOLAN: I guess he needs to discuss
13 foundation then because your witness hasn't testified
14 that he's never seen the document before. So
15 we don't --

16 MR. FRIEDMAN: Well, it's his job to establish
17 some foundation.

18 JUDGE DOLAN: So, yes, I do agree with you that
19 you need to set a little better proper foundation.

20 BY [!EZ SPEAKER 04]:

21 Q All right. Mr. McPhee, are you aware at
22 the time that AT&T and BellSouth announced their

1 merger that they made certain statements with respect
2 to the benefits from that merger?

3 A I understand that there were news releases.

4 Q And have you ever seen -- have you seen --
5 did you see those news releases?

6 A I saw media reporting on the merger. I'm
7 sure I saw some news releases as they came out.

8 Q Okay. And have you seen news releases that
9 disclosed the amount of benefit that would be derived
10 from AT&T?

11 A Specifically recalling that in quantified,
12 I can't say that I remember seeing any -- anything
13 like that.

14 Q Does AT&T normally release news releases?

15 MR. FRIEDMAN: Objection. Foundation.

16 THE WITNESS: I'm not in the --

17 JUDGE DOLAN: Hold on. I'm going to overrule
18 that objection.

19 BY [!EZ SPEAKER 04]:

20 Q Does this appear to be a news release from
21 AT&T?

22 A It appears to be.

1 Q Okay. And do you believe that it was
2 released as part of the normal business records of
3 AT&T?

4 MR. FRIEDMAN: Objection. Foundation.

5 Judge, unless there's some reason to
6 believe -- I mean, I can look at this, as can your
7 Honor, as can Mr. Pfaff, and say what it seems to
8 look like and what it appears to be. Unless this
9 witness has some basis for saying, Yes, I -- because
10 I know what these things look like, I'm here to
11 testify that that's what this is, the testimony's of
12 no use. And so there really is no foundation.

13 MR. PFAFF: Well, your Honor, this -- it is an
14 official news release from AT&T and BellSouth, and as
15 such, it's a reflection of the company position. I'm
16 not going to ask Mr. McPhee whether or not he
17 developed that position. I'm just simply going to
18 ask him whether or not AT&T made certain statements
19 about the benefits of the merger.

20 JUDGE DOLAN: All right. I'm going to overrule
21 the objection.

22 MR. PFAFF: Thank you.

1 BY [!EZ SPEAKER 04]:

2 Q So, Mr. McPhee, if would you turn to
3 Page 2, please.

4 A Okay.

5 Q Do you see in the middle of that page there
6 is a bolded section that's titled, Merger Synergies
7 and Financials?

8 A I see that.

9 Q Could you read the two sentences following
10 that, please.

11 MR. FRIEDMAN: Objection. This is improper
12 examination. I'll tell you what, AT&T Illinois will
13 stipulate -- and we can cut through this. We will
14 stipulate that this piece of paper says the words
15 that it says.

16 MR. PFAFF: Okay. Would you agree that we can
17 admit this as an exhibit then?

18 MR. FRIEDMAN: Not at this point. Okay. What
19 I would suggest would be that if you have a document
20 that you think is a business record and you want to
21 get it admitted, the normal way of doing that is
22 to -- would have been to present it to us yesterday

1 and say, We've got some exhibits. We'd like to offer
2 these as business records, are they business records?
3 I'm now looking at this for the first time.

4 If you would like -- if you have some
5 documents like this and you'd like to take a break
6 and give them to us and have us figure out if they're
7 business records to whose admissibility we would
8 stipulate, we can do that. But that's the way this
9 is usually done, as I understand it.

10 MR. PFAFF: I was just simply going to ask
11 either Mr. McPhee to read the portions of this
12 release into the record. They made an objection.
13 You've overruled that.

14 Now, if they don't want to stipulate
15 to it as an exhibit, then I'm going to -- I'm free to
16 ask Mr. McPhee questions about what this is.

17 JUDGE DOLAN: As part of cross-examination as
18 far as admitting it into the record, you're not --
19 you're just going to ask questions and not admit it
20 into the record?

21 MR. PFAFF: If they are not going to agree that
22 it should be an exhibit, then I'm just going to ask

1 him questions about it.

2 MR. FRIEDMAN: Your Honor, I'm not trying to be
3 unnecessarily obstreperous or difficult.

4 In my experience, when a party has
5 documents it wants admitted in evidence, okay, it
6 shares those documents with the other side in
7 advance, and if they appear to be business records,
8 asks in advance, Is this something you're willing to
9 stipulate to? Okay. Again, I'm seeing this for the
10 first time. I don't know what it is.

11 MR. PFAFF: Well, and I understand. You
12 crossed our witnesses yesterday about documents that
13 they had seen for the first time.

14 [!EZ SPEAKER 02]: That isn't -- that's not my
15 gripe. Those were admitted -- those were documents,
16 for one thing, that the Commission would have taken
17 administrative notice of because they're part of the
18 Commission's records, okay, and we gave document
19 numbers.

20 We're dealing -- look, we're dealing
21 with this very basic thing. It's just the
22 admissibility of a document that you think is a

1 business record, and it may be. And, again, if you
2 have a bunch of documents like this that you wanted
3 us look at, we'll do that. And you may be able to
4 get them admitted. And you don't actually need
5 Mr. McPhee to get them admitted. I mean, if you have
6 arguments that these are business records, you can
7 make them, right, but unless he's the custodian of
8 the documents or he recognizes this as something that
9 is, you know -- that AT&T does put out in the normal
10 course of business, he can't help you with that
11 exercise.

12 MR. PFAFF: Can we take a quick recess, please?

13 JUDGE DOLAN: Yes. We'll go off the record.

14 (Whereupon, a discussion was had
15 off the record.)

16 JUDGE DOLAN: A discussion took place
17 concerning these exhibits off the record.

18 MR. PFAFF: Thank you, your Honor. Sprint and
19 AT&T discussed several exhibits, and I'm going to go
20 ahead and mark these right now. Specifically, I'd
21 like to mark as Cross -- it would be Cross 1, the
22 AT&T news release. And McPhee Cross 2, the letter

1 dated December 28, 2006, from Robert W. Quinn, Jr.

2 (Whereupon, Sprint Cross-Exhibit

3 Nos. 1 & 2 were marked for

4 identification.)

5 [!EZ SPEAKER 04]: And, again, AT&T -- I don't

6 want to oversay this, but I believe that AT&T has

7 agreed to the entry of these exhibits.

8 MR. FRIEDMAN: Yeah, we don't object to their

9 admission into evidence.

10 JUDGE DOLAN: All right. Did Sprint have any

11 cross-exhibits yesterday?

12 MR. SCHIFMAN: No.

13 JUDGE DOLAN: Sprint Cross 1 -- or McPhee Cross

14 1 and Sprint Cross -- or McPhee Cross No. 2 will be

15 admitted into the record.

16 (Whereupon, Sprint Cross-Exhibit

17 Nos. 1 & 2 were admitted into

18 evidence.)

19 [!EZ SPEAKER 04]: Thank you, your Honor.

20 BY [!EZ SPEAKER 04]:

21 Q Mr. McPhee, if you will, turn to Page 2 of

22 Sprint Cross-Exhibit No. 1.

1 A Okay.

2 Q And do you see the bold area titled,
3 Mergers, Synergies and Financials, midway down the
4 page?

5 A I do.

6 Q And rather than have you read that now,
7 would you agree that basically says that AT&T expects
8 synergies of 2 to 3 billion per year; would that be
9 correct?

10 Well, I'm sorry. Let me ask a better
11 question.

12 A I just hadn't had a chance to read it is
13 all.

14 Q I understand.

15 Would you agree that it says that AT&T
16 expects that the synergies will ramp up quickly to
17 reach an annual run rate exceeding 2 billion in 2008;
18 is that correct?

19 A Yeah, it says, Combines operations will
20 ramp up -- will ramp quickly to reach an annual run
21 rate exceeding 2 billion in 2008. It does say that.

22 Q Okay. And does it say that these synergies

1 will increase to 3 billion in 2010?

2 A Yes, it does.

3 Q And then the following -- could you just
4 read the following sentence.

5 A Merging AT&T, BellSouth and Cingular
6 Wireless is expected to yield a net present value 18
7 million dollars in synergies.

8 Q Thank you.

9 What do you understand the word
10 "synergy" to mean?

11 MR. FRIEDMAN: Objection. Beyond the scope of
12 his direction examination and irrelevant and lack of
13 foundation.

14 Presumably the question is getting at
15 what the word "synergy" means in this document. And
16 there is no foundation -- no foundational basis for
17 the witness having any knowledge about that.

18 MR. PFAFF: Well, without, I guess, going into
19 all my cross-examination, Mr. McPhee has testified
20 that porting the Kentucky agreement to Illinois
21 reduces the revenues to AT&T Illinois. I think I'm
22 entitled to question Mr. McPhee about what was

1 attempted to be gained through the merger and
2 specifically whether or not they intended to try to
3 combine certain operations.

4 JUDGE DOLAN: I'll overrule the objection.

5 [!EZ SPEAKER 04]: Do you recall the question?

6 THE WITNESS: Please restate it.

7 MR. PFAFF: Can you just restate the question,
8 please.

9 (Whereupon, the record was read
10 as requested.)

11 THE WITNESS: Well, I probably have to read the
12 entire news release to understand the context of how
13 they're using the term. But, generally speaking, it
14 would seem to me that synergies would mean a benefit
15 of combinations.

16 BY [!EZ SPEAKER 04]:

17 Q Okay. And by that you understand that they
18 would combine the operations of BellSouth and AT&T?

19 A Again, not reading the entire news release
20 and understanding that's the basic subject of this
21 news release, I would assume that when they're
22 speaking of synergies in this news release, that's

1 what they're speaking about is the combination of
2 those companies.

3 Q Okay. And would you consider it to be --
4 in your review of the interconnection agreement --
5 the Kentucky intersection agreement and the BellSouth
6 interconnection agreement, would you consider it to
7 be more efficient for a company to have one agreement
8 throughout its territory or multiple agreements?

9 MR. FRIEDMAN: Objection. Beyond the scope.
10 Irrelevant.

11 [!EZ SPEAKER 04]: Well, your Honor, he's
12 testified that he had to modify the Kentucky
13 agreement to comport with Illinois. I think I'm
14 entitled to ask him whether or not it's more
15 efficient to have one agreement or multiple
16 agreements.

17 JUDGE DOLAN: I recall he testified about a lot
18 of his work in different states. So I'm going to
19 overrule that objection.

20 THE WITNESS: I don't think I have a specific
21 opinion without really understanding what you mean by
22 efficient -- or "more efficient." And also without

1 looking at the specific circumstances of what a
2 contract may or may not contain pertaining to a
3 specific state, to the specific entities that are in
4 that contract as well as to the other states where
5 that contract might be implemented as well. So I
6 think it's all very specific to the circumstances
7 between the parties, between the contract language,
8 between the states in order to determine what may or
9 may not be efficient or more efficient.

10 BY [!EZ SPEAKER 04]:

11 Q Do you recall when the merger was approved
12 by the FCC?

13 A The BellSouth merger?

14 Q The AT&T BellSouth merger.

15 A Yes, I do.

16 Q What was that date?

17 A It was December 29th, I believe, 2006.

18 Q And you understand that there were
19 conditions imposed upon AT&T as part of that merger;
20 is that correct?

21 A I believe that there were conditions that
22 AT&T agreed to, yes.

1 Q And we have commonly been referring to
2 those conditions as the merger commitments. Do you
3 understand that?

4 A Yes, I do.

5 Q So when I refer to "the merger
6 commitments," we know we're talking about the same
7 thing?

8 A Yes.

9 Q Do you know -- well, before you is a --
10 what's Sprint Cross-Exhibit 2. Do you see that?

11 A I do.

12 Q Okay. And that's a letter dated
13 December 28th, 2006?

14 A Yes, it is.

15 Q And who is that letter from?

16 A Robert W. Quinn, Jr.

17 Q And what does it reflect his role with
18 AT&T?

19 A It says his title is senior vice president
20 of federal regulatory.

21 Q Do you know, is Mr. Quinn still with AT&T?

22 A I don't know.

1 Q In this letter Mr. Quinn references that
2 he -- you can see the first sentence. He said that
3 AT&T submitted a list of possible merger commitments
4 on October 13th; is that correct?

5 A Yes.

6 Q Okay. If you read down later through -- in
7 the second paragraph, the third sentence that starts,
8 Accordingly, do you see that sentence?

9 A I do.

10 Q Okay. Mr. Quinn indicates that the
11 applicants agreed to the attached merger commitments.
12 Do you see that phrase?

13 A Yes, I do.

14 Q So is it your understanding that AT&T
15 submitted merger commitments on -- or merger
16 conditions on December 28th with his letter?

17 MR. FRIEDMAN: Objection. Foundation.

18 JUDGE DOLAN: That one I will sustain.

19 BY [!EZ SPEAKER 04]:

20 Q Does this letter reference attached merger
21 commitments?

22

1 MR. FRIEDMAN: Stipulate that it does.

2 BY [!EZ SPEAKER 04]:

3 Q And you understand that there are merger

4 commitments that are -- that were part of the AT&T

5 BellSouth merger; is that right?

6 A That's correct.

7 Q Okay. And would you agree that the FCC had

8 not approved the merger prior to December 28th?

9 A Yes, I would.

10 Q And the merger commitments that we're

11 talking about specifically today are what we refer to

12 as the interconnection-related merger commitments; is

13 that right?

14 A Generally speaking, yes. I believe we do

15 some transaction costs, is how it's characterized.

16 Q Okay. Do you have a copy of those merger

17 commitments in front of you?

18 A No, I do not.

19 [!EZ SPEAKER 04]: Would you like to see these,

20 Mr. Friedman?

21 BY [!EZ SPEAKER 04]:

22 Q I'm handing you what's titled Appendix F.

1 Do you see that?

2 A I do.

3 Q Okay. And do you -- those are the merger
4 commitments in question; correct?

5 A When you say "the merger commitments in
6 question," you mean the one we're arguing about
7 today, which is Merger Commitment 7.1?

8 Q Well, actually this is the larger merger
9 commitments that were agreed to by AT&T. I can --

10 [!EZ SPEAKER 04]: Again, may I approach your
11 witness?

12 MR. FRIEDMAN: Mm-hmm.

13 MR. PFAFF: I'll get you to the specific page.
14 BY [!EZ SPEAKER 04]:

15 Q And do you see the heading, Reducing
16 transaction costs?

17 A Yes, I do.

18 Q Okay. And those are the four
19 interconnection-related merger commitments; correct?

20 A Yes, they are.

21 Q Now, you were here at the hearing
22 yesterday; is that correct?

1 A Yes.

2 Q Do you remember Mr. Schiffman asking an AT&T
3 witness about these merger commitments?

4 A Generally speaking, yes.

5 Q And I guess the question I'm going to ask
6 you is, do you believe it's reasonable to assume that
7 AT&T contemplated when it entered into these merger
8 commitments that carriers may want to invoke them?

9 MR. FRIEDMAN: Objection. Relevance.
10 Foundation.

11 MR. PFAFF: Well, again, your Honor, he's
12 testified about the merger commitments.

13 MR. FRIEDMAN: The relevance goes to the -- the
14 question was, do you think it's reasonable to assume.
15 What Mr. McPhee thinks is reasonable to assume
16 doesn't have any bearing on anything.

17 JUDGE DOLAN: All right. I'll ask you to
18 rephrase the question, please.

19 MR. PFAFF: Okay.

20 BY [!EZ SPEAKER 04]:

21 Q Mr. Quinn proposed certain merger
22 conditions to the FCC; is that correct?

1 A Yes.

2 Q And AT&T, in order to receive approval from
3 the FCC, was willing to comply with these merger
4 commitments; is that correct?

5 A Yes.

6 Q Is it, therefore, reasonable to assume that
7 AT&T determined what the likelihood that carriers
8 would try to invoke the merger commitments?

9 MR. FRIEDMAN: Objection. Relevance.

10 JUDGE DOLAN: Overruled.

11 THE WITNESS: I don't know if AT&T did any
12 calculations to determine any type of likelihood.
13 But I do believe that the merger commitments were put
14 out there for carriers to take advantages of them.

15 BY [!EZ SPEAKER 04]:

16 Q And so are you unaware of any calculations
17 performed by AT&T as to the cost of the merger
18 commitments?

19 A Specific costs, I'm not aware of any
20 calculations.

21 Q You have never been presented with any
22 documents that purported to show the expense or cost

1 of complying with the merger commitments; is that
2 correct?

3 A Not that I recall.

4 Q Were you ever presented with any costs or
5 expenses related to Merger Commitment 7.1?

6 A Can you please clarify what you mean by
7 costs associated with it.

8 Q Were you ever submitted with any document
9 that analyzed what the cost or expense or reduction
10 in revenue that would be to AT&T associated with the
11 7.1 merger commitment?

12 A No.

13 Q Turning to your testimony on Page 5.

14 JUDGE DOLAN: Direct or rebuttal?

15 MR. PFAFF: Direct. I'm sorry.

16 MR. HARVEY: Page 25, Counsel?

17 MR. PFAFF: Page 5.

18 [!EZ SPEAKER 05]: Oh, I'm sorry.

19 BY [!EZ SPEAKER 04]:

20 Q And specifically starting on Line 108, you
21 would agree that the interconnection-related merger
22 commitments were intended to save transaction costs

1 associated with negotiating and arbitrating
2 agreements under Section 252 of the Act?

3 A Yes.

4 Q Is that what you said?

5 A I said specific to Merger Commitment 7.1 --

6 Q Right.

7 A -- that's also within that heading of the
8 other four interconnection merger commitments.

9 Q Now, is it your understanding then that
10 this offers a benefit that a carrier didn't have
11 prior to Merger Commitment 7.1?

12 A I believe it offers a carrier new options.
13 Whether or not it's a benefit would be up to that
14 carrier to determine. But it does offer carriers new
15 options in adopting contracts.

16 Q Okay. And so in your view, this was a new
17 option that was not available prior to the merger
18 commitment; correct?

19 A Yes, that's correct.

20 Q And you would agree that prior to the
21 merger commitment carriers already could negotiate
22 and arbitrate under Section 251; is that correct?

1 A Yes.

2 Q I'm sorry. 251 and 252?

3 A Yes.

4 Q Thank you.

5 Also they could adopt an agreement

6 within the state under 252; is that correct?

7 A 252(i), that's correct.

8 Q Okay. And so this is an option that was

9 separate and apart from those two methods; is that

10 correct?

11 A Well, it's different. I guess it could be

12 characterized, at least from Merger Commitment 7.1,

13 of something of an extension in that it's similar to

14 a 252(i) in-state adoption, but it is now allowing

15 for the same type of transaction to port a contract

16 into another state, essentially adopt another state's

17 contract.

18 Q Okay. But 252(i) exists with or without

19 Merger Commitment 7.1; is that correct?

20 A That's correct.

21 Q And in order for the merger commitment to

22 have any meaning, it provides a different option

1 other than 252(i); is that correct?

2 A Yes.

3 Q Something you just said -- and I want to be
4 careful here because I don't want to misstate what
5 you said. But you attribute some of the
6 characteristics of 252(i) to the merger commitments.
7 Is that a fair statement?

8 A What I was trying to say is generally,
9 Merger Commitment 7.1 is similar in that a 252(i)
10 adoption allows a carrier to find a contract within
11 that state and adopt it within the state. And what
12 Merger Commitment 7.1 allows for is a carrier under
13 certain circumstances and conditions to port a
14 contract from a different state into a new state. So
15 in that way, it's similar in the adoption, and there
16 are differences, of course.

17 Q Okay. Fair enough.

18 You indicated earlier that you weren't
19 sure -- you didn't agree with my characteristic that
20 the merger commitment provided a benefit to other
21 carriers. Do you recall that?

22 A I didn't disagree, but I don't know. It's

1 up to the carrier themselves to determine whether
2 there's benefit to it.

3 Q Well, do you think a carrier would seek to
4 invoke the merger commitment if it wasn't
5 advantageous to them?

6 A I can't speak for how a carrier would
7 operate.

8 Q On Page 3 of your direct testimony -- and
9 actually starting on -- at the bottom of Page 2, you
10 are describing the limitations included in Merger
11 Commitment 7.1; is that correct? And I'm sorry, this
12 is the bottom of Page 2 starting on Line 46 in your
13 direct testimony.

14 A Yes, I see that.

15 Q And the very bottom it just says, Generally
16 these?

17 A Yes.

18 Q You state in your testimony that, Generally
19 these limitations insured that a requesting carrier
20 neither ends up with an interconnection agreement
21 that simply doesn't work nor unjustifiably profits
22 from its exercise of the porting opportunity. Is

1 that what you said?

2 A Yes.

3 Q Now, you have Merger Commitment 7.1 in

4 front of you; is that correct?

5 A Yes.

6 Q Can you show me within the language there

7 where the exception for unjustifiable profits is?

8 A It doesn't use those words. I would think,

9 though, that a company that sought to port a contract

10 from one state to another state that then sought to

11 not allow for the port to state conformance process,

12 pricing, products to take place, that there's a

13 potential for a carrier to try and attempt to profit

14 from different pricing if it's not adjusted to the

15 state-specific pricing or if it attempts to seek

16 products that that port to state does not offer.

17 Q Well, you would agree that there are

18 certain enumerated or listed exceptions; is that

19 correct?

20 A Exceptions to...?

21 Q The ability to port an agreement.

22 A There are limitations, that's correct.

1 Q Okay. Limitations.

2 And you would also agree that there is

3 no limitation in the merger commitment in the

4 language of the merger commitment itself, 7.1, for

5 unjustifiable profits?

6 A I would agree that those words do not

7 appear in Merger Commitment 7.1.

8 Q Additionally, on Page 3, starting on Line

9 59 of your direct testimony, you indicate that you

10 will explain why Sprint's attempt to port the

11 Kentucky ICA -- and I paraphrased a little bit --

12 would provide Sprint with an unwarranted subsidy. Do

13 you see that testimony?

14 A I do.

15 Q Now, again, you have Merger Commitment 7.1

16 in front of you; is that correct?

17 A Yes.

18 Q Do the words "unwarranted subsidy" appear

19 within that merger -- the merger commitment?

20 A No.

21 Q Now, you have indicated that this

22 Commission should read into the merger commitment a

1 limitation subject to 809(b). Do you recall that?

2 A I'm sorry. Can you restate that?

3 Q Sure.

4 On Page 33 of your testimony --

5 A Okay.

6 Q Okay -- there's a discussion in your
7 testimony with respect to Rule 809(b); is that
8 correct?

9 A Yes, it is.

10 Q Now, Rule 809(b) refers to a 252(i)
11 adoption; is that correct?

12 A Yes, that's correct.

13 Q And your testimony would suggest that the
14 Illinois Commission apply some of the conditions that
15 are contained in 809(b) to Sprint's election; is that
16 correction?

17 A Generally speaking, yes, we're asking the
18 Commission to consider Rule 809(b) as part of the
19 impact of a carrier optioning in under Merger
20 Commitment 7.1.

21 Q Well, specifically you're referring to the
22 condition in 809(b) discussing with the costs of

1 adopting an agreement; is that correct?

2 A That's correct.

3 Q Now, looking at Merger Commitment 7.1, can

4 you show me where that limitation is contained?

5 A Which limitation?

6 Q The limitation with respect to -- that's

7 similar to 809(b).

8 A Are you asking me for specific words or...?

9 Q Yes.

10 A So which words are you --

11 Q I'm asking you to show me in Merger

12 Commitment 7.1 the words you believe demonstrate that

13 the 809(b) exceptions should apply here.

14 A I believe looking at Merger Commitment 7.1

15 in its entirety, including subject to state-specific

16 pricing, translates into appropriately opined pricing

17 in the port to state, such that a carrier does not

18 increase the -- such that that result in contact does

19 not increase AT&T's costs above what it costs to

20 operate that contract in the port from state.

21 Q Well, you would agree that nothing in the

22 merger commitment itself references FCC Rule 809(b);

1 is that correct?

2 A There's no specific reference in that
3 merger commitment.

4 Q And, furthermore, nothing in Merger
5 Commitment 7.1 references to 252(i); is that correct?

6 A That's correct.

7 Q Mr. McPhee, have you testified in other
8 proceedings with respect to Sprint's election to --
9 Sprint's election under the merger commitments?

10 A Different -- yes, I have under a different
11 merger commitment.

12 Q Okay. And could you tell me which states
13 those were, please?

14 A They were BellSouth states. I believe I
15 filed testimony in North Carolina, South Carolina,
16 Georgia and Alabama.

17 Q And you indicated those were under
18 different merger commitments?

19 A That's correct.

20 Q Could you tell me what merger commitment
21 that was, please?

22 A I don't remember the specific number. It

1 had to do with the extension of the contract for a
2 three-year period beyond the term of the underlying
3 contract.

4 Q And you have the three
5 interconnection-related merger commitments in front
6 of you; correct?

7 A I do.

8 Q And we've been referring to the first one
9 as 7.1; right?

10 A Yes.

11 Q So could you look at Merger Commitment 7.3.

12 A Okay.

13 Q And is that the merger commitment you're
14 referring to?

15 A No. I believe it's 7.4.

16 Q I'm sorry. Thank you.

17 And what does 7.4 say?

18 A It says -- you want me to read it?

19 Q Please.

20 A The AT&T BellSouth ILEC shall permit a
21 requesting telecommunications carrier to extend its
22 current interconnection agreement regardless of

1 whether its initial term has expired for a period of
2 up to three years, subject to amendment to reflect
3 prior and future changes of law. During this period,
4 the interconnection agreement may be terminated only
5 be at the carrier's request unless terminated
6 pursuant to the agreement's default provisions.

7 Q Could you briefly describe the nature of
8 those proceedings?

9 MR. FRIEDMAN: Objection. Relevance.

10 Judge, I may be anticipating
11 mistakenly where we're headed. And I'm sure counsel
12 will correct me if I am. But as Mr. McPhee has made
13 clear, these were proceedings in some states in the
14 BellSouth region under another merger commitment,
15 which is not at issue here. And I can only assume
16 that counsel will attempt somehow to demonstrate
17 through Mr. McPhee that AT&T took some positions in
18 those proceedings that in counsel's view are -- were
19 inappropriate or mistaken.

20 So, again, I invite you to correct me
21 if I'm wrong, but we may be embarking on what could
22 be protracted examination on a subject that has zero

1 to do with this case.

2 MR. PFAFF: Well, I certainly think I'm free to
3 inquire as to the witness's testimony in other
4 proceedings, especially, again, as they relate to the
5 merger commitments generally. He's indicated in his
6 testimony that he is here to provide AT&T's position
7 with respect to the merger commitments. And I think
8 I'm entitled to inquire what AT&T's position is about
9 the merger commitments.

10 MR. FRIEDMAN: Your Honor, he's here to testify
11 about the merger commitment that's the subject of
12 this proceeding. What could possibly be more
13 collateral? You might as well pick, your Honor --
14 Mr. McPhee demonstrated -- testified some years ago
15 in all sorts of arbitration proceedings. I suppose
16 counsel might say, Well, let me pull out something
17 from the 2001 arbitration with Level 3 or something
18 in Missouri, and didn't you say this? And they
19 decided you were wrong, didn't they? I mean, that's
20 about how closely related this is to this case.

21 MR. PFAFF: With the Court's indulgence, I
22 promise I will not go into that kind of detail. I do

1 believe I'm entitled to ask a brief number of
2 questions about positions that AT&T has taken with
3 respect to the merger commitments.

4 JUDGE DOLAN: So long as you keep it to that
5 subject, I'll overrule the objection.

6 MR. PFAFF: Thank you.

7 BY [!EZ SPEAKER 04]:

8 Q Do you recall the question, Mr. McPhee?

9 A No, I don't. I'm sorry.

10 Q I believe the question was, what was the
11 nature of those proceedings?

12 A They were a dispute over Merger Condition
13 7.4. Sprint sought to extend an expired agreement
14 that AT&T opposed the extension. And AT&T proposed
15 that the parties implement a contract that the two
16 parties had largely negotiated and had settled in --
17 they had resolved in concept, I believe -- that's not
18 the right phrase -- but they were very close to
19 negotiating the entire document. And so AT&T sought
20 to continue to implement that contract as it had been
21 negotiated through the prior two and a half years, as
22 well as include some Attachment 3 interconnection

1 terms and provisions that had not yet been finally
2 negotiated.

3 Q So just to shorten that answer a little
4 bit, you agree that Sprint sought to invoke Merger
5 Commitment 7.4; is that correct?

6 A That's correct.

7 Q AT&T opposed that election; is that
8 correct?

9 A That's correct.

10 Q And the matter was submitted to a state
11 commission for decision; is that correct?

12 A Yes.

13 Q That's all. Thank you.

14 Just another little housekeeping
15 matter, if you don't mind. We've talked a lot about
16 the Kentucky ICA; correct?

17 A I'm not sure we talked a lot about it this
18 morning, but this proceeding has been about the
19 Kentucky ICA, yes.

20 Q And Sprint's election was to port the
21 Kentucky ICA -- and I'll -- pardon me for the court
22 reporter, but we'll probably -- I'll say that a

1 lot -- you understand when I say "ICA" means
2 interconnection agreement?

3 A Yes, I do.

4 Q Okay. And when I refer to the Kentucky
5 ICA, it's the interconnection agreement between
6 Sprint and BellSouth that was approved by the
7 Kentucky Commission; is that correct?

8 A Sprint PCS and Sprint CLEC and BellSouth,
9 that's correct.

10 Q But from a broader sense, you understand
11 that the Kentucky ICA is just the Kentucky version of
12 what sometimes is referred to as the BellSouth ICA;
13 is that correct?

14 A I don't refer to it as the BellSouth ICA,
15 but I do understand that there is a very similar
16 contract for each of the nine BellSouth states.

17 Q And I just want to -- if I slip up and say
18 "BellSouth ICA," I'm not intending to mean anything
19 other than -- just sometimes generically I refer to
20 it as a BellSouth ICA, do you understand? And you
21 can correct me and say, Do you mean the Kentucky ICA?

22 A Okay.

1 Q Okay. You do understand, though, that
2 the -- there was an ICA between Sprint CLEC and
3 Sprint PCS that was filed and approached in the nine
4 BellSouth states; is that correct?

5 A That's correct.

6 Q Okay. And that -- do you know how long
7 that agreement has been in effect?

8 A I believe since 2001.

9 Q Okay. And since 2001, are you aware of any
10 other carriers that have attempted to adopt that
11 agreement?

12 A No.

13 Q Do you know if other carriers have asked to
14 adopt that agreement?

15 A I don't know. I wouldn't have had any
16 access to that information prior to -- essentially
17 January 2007.

18 Q All right. You can thank some of your
19 co-witnesses for some of this. Mr. Constable
20 testified that he did not know if AT&T was exchanging
21 traffic with Sprint in Kentucky, do you recall that?

22 A Yes, I do.

1 Q Do you know if AT&T is exchanging traffic
2 with Kentucky?

3 A I believe they are.

4 Q Okay. And is your understanding that the
5 parties are operating -- that Sprint and AT&T are
6 operating under the Kentucky ICA in Kentucky;
7 correct.

8 A It's my understanding that that contract is
9 in force in Kentucky, yes.

10 Q Now, in your direct on Page 16 -- and
11 actually I apologize, starting on Page 15 at the very
12 bottom, you describe the Kentucky ICA as being
13 approximately 1169 pages long and that AT&T's team
14 had redlined to port the ICA to all 13 states in the
15 legacy AT&T ILEC region. Do you recall that
16 testimony?

17 A Yes, I do.

18 Q And Illinois would be included in the
19 legacy 13 states; is that correct?

20 A That's correct.

21 Q And is it your testimony then that the
22 Kentucky ICA -- strike that.

1 You indicate that Sprint first
2 requested to port the Kentucky ICA on November 20th
3 of 2007 in Illinois; is that correct?

4 A Yes.

5 MR. FRIEDMAN: Can you give the --

6 MR. PFAFF: Well, he's already answered. I
7 think that's a fairly noncontroversial point.

8 BY [!EZ SPEAKER 04]:

9 Q Do you know the status -- immediately prior
10 to that date, were you aware of the status of the
11 party's existing ICA?

12 MR. FRIEDMAN: Can I --

13 [!EZ SPEAKER 04]: Sure.

14 [!EZ SPEAKER 02]: I think you said "were you
15 aware," so is the question was he at that time aware?

16 MR. PFAFF: I'm sorry.

17 BY [!EZ SPEAKER 04]:

18 Q Are you aware now of what the status was
19 immediately prior to that date?

20 A For which ICA?

21 Q The ICA that was in effect, I guess, prior
22 to Sprint's election.

1 A In the state of Illinois?

2 Q State of Illinois.

3 A No. I would assume that there was an ICA

4 that the parties were operating under. Whether it

5 was expired or not, I don't know specifically know.

6 Q You're not aware that AT&T had terminated?

7 A I was aware that there was a notice of --

8 I'm not part of this process specifically. But I was

9 aware that there was a notice of intent to

10 renegotiate or enter into a new agreement. Whether

11 or not, like I said, that expiration date had already

12 passed, I don't know.

13 Q Okay. And I'll be careful now. I mean, I

14 understand you're not on the interconnection

15 negotiation group; is that correct?

16 A That's correct.

17 Q In your -- under your role as kind of the

18 regulatory -- the regulatory subject matter expert

19 for AT&T, you understand generally how

20 interconnection agreements are formed; is that

21 correct?

22 A Generally, yes.

1 Q And normally you can go to an arbitration
2 process under 251, 252; is that correct?

3 A A negotiation and arbitration process, yes.

4 Q Are you also aware that Sprint had
5 requested to port the Kentucky ICA into Ohio in July?

6 A Generally, yes, I was aware.

7 Q Do you recall Sprint -- AT&T's initial
8 response to AT&T -- I mean, I'm sorry -- to Sprint's
9 port request? I'm sorry. Turn to Page 11 of your
10 direct testimony.

11 A Okay.

12 Q And the question there is -- on Line 267
13 is, Did AT&T respond to Sprint's request? Do you see
14 that question?

15 A I do.

16 Q Okay. And do you see your answer?

17 A Yes.

18 Q And was your answer -- was AT&T's response
19 dated December 13 that once Sprint informed AT&T
20 which of the Sprint CMRS providers was to be a party
21 to the agreement, AT&T would process the porting
22 request?

1 A Yes.

2 Q And you understood that to mean that Sprint
3 needed to pick one of its wireless carriers; is that
4 correct?

5 A One wireline carrier and one wireless
6 carrier, yes.

7 Q And so -- and, again, just for
8 clarification, Sprint CLEC is the wireline carrier.
9 Sprint PCS, what we referred to yesterday, the CDMA
10 network, right, Sprint PCS is the CDMA portion. And
11 then you understood that Sprint had merged with
12 Nextel; is that correct?

13 A Yes.

14 Q Okay. And that there are two Nextel
15 entities; is that correct?

16 A Yes.

17 Q Okay. And those entities are Nextel West
18 Corp., and NPCR, Inc.?

19 A Yes.

20 Q Okay. And AT&T's response was essentially
21 that Sprint need to either pick Sprint PCS or Nextel
22 but could not have both; is that correct?

1 A Well, when you say "or Nextel," I think you
2 mean, or one of the Nextel entities; but, yes, AT&T
3 responded that the contract was intended for and
4 written for one ILEC, which is AT&T, and one CLEC and
5 one wireless carrier.

6 Q Now, you still have the merger commitments
7 there in front of you; is that correct?

8 A Yes.

9 Q And that merger commitment says that AT&T
10 will make an agreement available to any requesting
11 carrier, is that correct, subject to the limitations?

12 A Yes.

13 Q Do you see any exception within that merger
14 commitment that limits a carrier to one of its
15 wireless entities?

16 A Well, I do not; but I also don't see that
17 it says, Any requesting carrier or carriers, nor does
18 it say, To all requesting carriers. So...

19 I'm sorry. Can you reask your
20 question?

21 Q I was asking you if there is any exception
22 in the Merger Commitment 7.1 that limits a carrier to

1 one of its wireless entities?

2 A I don't think that -- no, there is no
3 exception that states that.

4 Q Okay. That you.

5 MR. PFAFF: Could we go off? Well, I just have
6 a few questions on the confidential portion. So I
7 suggest we --

8 JUDGE DOLAN: Go in camera.

9 All right. So this next portion will
10 be proprietary.

11 (Whereupon, the following
12 proceedings were had in
13 camera.)

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